Court of Appeals

of the

State of New York

CITY OF BUFFALO, CITY OF ROCHESTER, CITY OF YONKERS, CITY OF NEW YORK, and TOWN OF TONAWANDA,
Plaintiffs-Respondents,

– and –

CITY OF CINCINNATI, CITY OF CLEVELAND, CITY OF SEATTLE, CITY OF GREEN BAY, CITY OF COLUMBUS, CITY OF KANSAS CITY, CITY OF INDIANAPOLIS, CITY OF MADISON, CITY OF MILWAUKEE, CITY OF PARMA, CITY OF ST. LOUIS, and CITY OF BALTIMORE,
Plaintiffs,

– against –

HYUNDAI MOTOR AMERICA INC. and KIA AMERICA, INC.,
Defendants-Appellants.

On Certification from the United States Court of Appeals for the Ninth Circuit, No. 24-2350

MOTION FOR LEAVE TO FILE BRIEF FOR AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE BUSINESS COUNCIL OF NEW YORK STATE, INC.

KARL J. MIHM
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
Tel.: (212) 336-4368
Fax: (212) 468-7900
KMihm@mofo.com

AILEEN M. MCGRATH
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel.: (415) 268-6153
Fax: (415) 268-7522
AMcGrath@mofo.com

Attorneys for Amici Curiae

February 23, 2026

CP COUNSEL PRESS (800) 4-APPEAL • (390720)

PLEASE TAKE NOTICE that, upon the annexed affirmation of Aileen M. McGrath, dated February 23, 2026, and the accompanying proposed brief, the Chamber of Commerce of the United States of America ("the Chamber") and the Business Council of New York State, Inc. ("the Business Council") will move this Court on March 9, 2026, or as soon thereafter as counsel may be heard, at the Court of Appeals Hall, 20 Eagle Street, Albany, New York, 12207, for an order pursuant to 22 NYCRR § 500.23 granting the Chamber and the Business Council leave to file the accompanying brief as *amici curiae* in support of defendants-appellants in the above-entitled proceeding and for such other and further relief as the Court may deem just and proper.

Date: February 23, 2026

Respectfully submitted,

KARL J. MIHM
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
Tel.: (212) 336-4368
Fax: (212) 468-7900
KMihm@mofo.com

Aileen M. McGrath
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel.: (415) 268-6153
Fax: (415) 268-7522
AMcGrath@mofo.com

Attorneys for Amici Curiae

TO:

CHRISTOPHER G. MICHEL
RACHEL G. FRANK
QUINN EMANUEL URQUHART & SULLIVAN LLP
1300 I Street, NW, Suite 900
Washington, DC 20005
(202) 538-8308

STEVEN G. MADISON
JUSTIN C. GRIFFIN
QUINN EMANUEL URQUHART & SULLIVAN LLP
865 South Figueroa St., 10th Floor
Los Angeles, CA 90017
(213) 443-3000

LISA M. GEARY
JACOB DEN
QUINN EMANUEL URQUHART & SULLIVAN LLP
295 Fifth Avenue New York, NY 10016
(212) 849-7000

Attorneys for Defendants-Appellants

RICHARD DEARING
DEVIN SLACK
JEREMY W. SHWEDER
CORPORATION COUNSEL OF THE CITY OF NEW YORK
100 Church Street
New York, NY 10007
(212) 356-0843

GRETCHEN FREEMAN CAPPIO
BENJAMIN GOULD
KELLER ROHRBACK LLP
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3268
(206) 623-1900

Attorneys for Plaintiffs-Respondents

CORPORATE DISCLOSURE STATEMENT

Under 22 NYCRR § 500.1(f), proposed *amici curiae* make the following disclosures.

The Chamber of Commerce of the United States of America ("the Chamber") states that it is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation. The U.S. Chamber is affiliated with the Center for International Private Enterprise and the U.S. Chamber of Commerce Foundation. It has the following subsidiaries: CC1, LLC; CC2, LLC; USIBC Global Private Limited; and Article III Films, LLC.

The Business Council of New York State, Inc. ("the Business Council") states that it is incorporated in the State of New York. It has no parent entity. It has the following affiliates: The Business Council of New York State, Inc. Insurance Fund and The Public Policy Institute of New York State, Inc. It also has the following subsidiaries: The Business Council Service Corporation, Inc.; The Business Council Workers' Compensation Administrators, Inc.; New York Jobs Now, Inc.; Jobs New York Committee and The Business Council PAC.

AFFIRMATION

AILEEN M. MCGRATH hereby affirms the following to be true under the penalties of perjury, pursuant to CPLR 2106(a):

1. I am a partner with the law firm Morrison & Foerster LLP, counsel for the Chamber of Commerce of the United States of America (the "Chamber") and the Business Council of New York State, Inc. (the "Business Council") in the above-captioned proceeding. I submit this affirmation in support of the Chamber and the Business Council's motion to appear as *amici curiae* in support of Defendants-Appellants in the above-captioned proceeding.

2. A copy of the proposed brief is attached hereto as Exhibit A.

3. The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. *E.g.*, *Haussmann v. Baumann*, 44 N.Y.3d 1007 (2025).

4. The Business Council of New York State, Inc. ("the Business Council") is the leading business organization in New York State, representing the interests of large and small firms throughout the state. The Business Council's membership is made up of more than 3,000 companies, local chambers of commerce, and professional and trade associations. The Business Council's membership consists of both small businesses and some of the largest corporations in the world. The Business Council serves as an advocate for businesses in the state's political and policy-making arenas, working for a healthier business climate, economic growth, and jobs.

5. The Chamber and the Business Council have a strong interest in this case. The plaintiffs contend that businesses like Hyundai Motor America, Inc. and Kia America, Inc. owe a tort duty under New York law to compensate local governments for money spent to address the criminal acts of third parties outside the businesses' control. Creating such a duty would impose significant burdens on the Chamber's and the Business Council's members with cascading negative effects for both industry and consumers. Many of the Chamber's and the Business Council's members provide products that could be stolen or misused by third parties. They depend on established limits on tort-law duties to prevent them from being held liable as quasi-insurers against third parties' wrongdoing. As leading business

organizations, they are uniquely positioned to explain the harmful consequences that would result from the municipalities' unwarranted attempt to expand those duties.

6. Pursuant to 22 NYCRR § 500.23(a)(1)(i)(A), the Court should grant the Chamber and the Business Council permission to appear as *amici curiae* because they can help identify law or arguments that might otherwise escape the Court's consideration, given their extensive practical experience advocating on behalf of their members and their constituencies engaged in interstate business.

7. Pursuant to 22 NYCRR § 500.23(a)(1)(i)(C), I certify the following:

   a. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation in any other manner.

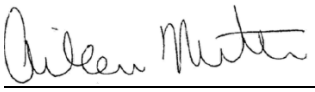
   b. No party or its counsel contributed money intended to fund preparation or submission of this brief.

   c. No person or entity other than the Chamber, the Business Council, or their counsel contributed money intended to fund preparation or submission of this brief.

8. For the reasons set forth herein, the Chamber and the Business Council respectfully request that the Court grant this motion in all respects, grant the Chamber and the Business Council leave to file the attached brief in this appeal, and award such other relief as the Court may deem just and proper.

I affirm this 23rd day of February 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Affirmed: February 23, 2026



AILEEN M. MCGRATH
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel.: (415) 268-6153
Fax: (415) 268-7522
AMcGrath@mofo.com

EXHIBIT A

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KARL J. MIHM
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
Tel.: (212) 336-4368
Fax: (212) 468-7900
KMihm@mofo.com

AILEEN M. MCGRATH
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
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San Francisco, CA 94105
Tel.: (415) 268-6153
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INTEREST OF *AMICI CURIAE*

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Amici have a strong interest in this case. The plaintiffs contend that businesses like Hyundai Motor America, Inc. and Kia America, Inc. owe a tort duty under New

York law to compensate local governments for money spent to address the criminal acts of third parties outside the businesses' control. Creating such a duty would impose significant burdens on *amici*'s members with cascading negative effects for both industry and consumers. Many of *amici*'s members provide products that could be stolen or misused by third parties. They depend on established limits on tort-law duties to prevent them from being held liable as quasi-insurers against third parties' wrongdoing. As leading business organizations, *amici* are uniquely positioned to explain the harmful consequences that would result from the municipalities' unwarranted attempt to expand those duties.

INTRODUCTION AND SUMMARY OF ARGUMENT

From criminals assaulting passersby in unlocked buildings to drivers speeding out of parking garages, this Court has consistently enforced a basic limit on tort duties: A defendant has no duty to prevent harms by third parties unless they have a "special" relationship with the plaintiff or third-party wrongdoer. As appellants argue—and respondents do not dispute—no such relationship is present here.

The lack of any relationship, much less a special one, resolves the case. The plaintiffs ("the municipalities") argue that Hyundai and Kia ("the manufacturers") owed them a duty to equip the cars they manufacture with an anti-theft feature called an engine immobilizer, which allegedly would have prevented third-party criminals from stealing those vehicles and causing harm to the municipalities' property and pocketbooks. But no one disputes that the manufacturers have no relationship with the criminals who stole the cars or the municipalities themselves, which merely happened to be the locations in which the thefts occurred. Time and again, on similar facts, this Court has declined to recognize a duty to control third parties that lack a special relationship. Under those many well-reasoned decisions, the answer to the certified question is "no."

The municipalities argue that the no-duty-to-control rule does not apply and urge this Court to recognize a duty under a multi-factor duty analysis. But even if this Court were to look to those other factors, they only confirm that no duty should

be recognized when the defendants have no relationships with the plaintiffs or wrongdoers. Indeed, imposing a duty in the absence of a relationship would contravene the purpose of requiring a duty in the first place. The duty requirement reflects societal judgments about the unfairness of holding one person liable for the crimes of another and to protect defendants from limitless and unpredictable liability. Under the municipalities' approach, businesses would become quasi-insurers against any third-party crimes related to their products or services, with no ability to control the criminals' conduct in the first place. Unmoored from any relationship requirement, businesses' exposure to liability would be boundless, as they could be accountable to an indeterminate class of plaintiffs for the conduct of an indeterminate class of third-party criminals.

Complying with that new sweeping duty would place unmanageable and unpredictable burdens on businesses. There would be no clear ex ante limits on liability and no logical stopping point because businesses cannot control who uses their products after they are sold. Such a boundless duty standard would leave businesses unable to predict their tort exposure and make informed business judgments about how to mitigate risks. Businesses would be forced to implement overbroad and costly protective measures to address those ill-defined risks, divert resources to address the threat of constant litigation, and adhere rigidly to industry norms in the hope of reducing their exposure. The result will be that many

businesses will have reduced ability and incentive to create innovative new products. Others may ultimately choose to restrict the products and services they offer altogether to reduce their liability risks. In all events, consumers will inevitably bear the ultimate price in the form of higher costs and less useful and diverse goods and services.

This Court should reject the municipalities' attempt to erase the established limits on the duty to protect against third-party harm. That does not mean, of course, that plaintiffs who are harmed by crimes and the costs flowing from that misconduct will have no recourse; criminals can and should be held accountable for their crimes. But the question here is whether liability for those crimes should extend to a business with no connection to those criminals. It should not.

ARGUMENT

I. TORT LAW IMPOSES NO DUTY ON THE MANUFACTURERS TO PROTECT THE MUNICIPALITIES FROM THIRD-PARTY CRIMINAL CONDUCT

A. There Is No Duty To Protect Against Third-Party Criminal Conduct Absent A Special Relationship

The existence of a duty is a "threshold" requirement for any negligence claim. *Hamilton v. Beretta USA Corp.*, 96 N.Y.2d 222, 232 (2001). To satisfy it, the plaintiff must show that the defendant owes "not a general duty to society, but a specific duty to him." *Lauer v. City of New York*, 95 N.Y.2d 95, 100 (2000). "Without a duty running directly to the injured person there can be no liability in

damages, however careless the conduct or foreseeable the harm." *Id.* This requirement ensures that tort liability is fair, predictable, and beneficial to society, and avoids scenarios that would impose "limitless liability to an indeterminate class of persons conceivably injured by any negligence." *Eiseman v. State*, 70 N.Y.2d 175, 188 (1987).

Whether a duty exists is a "legal" question "reserved for [j]udges." *Palka v. Servicemaster Mgmt. Servs. Corp.*, 83 N.Y.2d 579, 585 (1994). Courts traditionally "fix" the duty point by "balancing" five factors, "including the reasonable expectations of parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability." *Id.* at 586.

In certain scenarios, however, this Court has drawn categorical limits on the scope of a defendant's duty. This case implicates one of those constraints: the rule that "[a] defendant generally has no duty to control the conduct of third persons so as to prevent them from harming others." *D'Amico v. Christie*, 71 N.Y.2d 76, 88 (1987); *see Hamilton*, 96 N.Y.2d at 232-33; *Purdy v. Pub. Adm'r of Cnty. of Westchester*, 72 N.Y.2d 1, 8 (1988) ("In the ordinary circumstance, common law in the State of New York does not impose a duty to control the conduct of third persons to prevent them from causing injury to others."). The only exception to this no-duty-

to-control rule is where the defendant has a "special relationship" with either the plaintiff or the third-party wrongdoer. *Purdy*, 72 N.Y.2d at 8. Unless such a relationship exists, the defendant has no duty to control third parties to prevent harm, "even where as a practical matter [the] defendant can exercise such control." *Hamilton*, 96 N.Y.2d at 232-33.

Because this rule operates as a categorical one, this Court has not applied its default five-factor test when evaluating an asserted duty to control third parties. It has instead examined the defendant's relationships with the plaintiff and third party to decide whether any qualifies as special. *See Waters v. N.Y.C. Hous. Auth.*, 69 N.Y.2d 225, 231 (1987) (lack of such relationship "alone" is "fatal" to plaintiff's claim). Relationships this Court has determined meet that standard include master and servant, parent and child, common carrier and passenger, landowner and tenant, *Hamilton*, 96 N.Y.2d at 233, and doctor and patient, *Davis v. S. Nassau Cmtys. Hosp.*, 26 N.Y.3d 563, 574-75 (2015).

This Court has frequently focused on two "key" features that make these relationships special. *Hamilton*, 96 N.Y.2d at 233; *see Waters*, 69 N.Y.2d at 229 ("two important factors"). First, the defendant's relationship with the third-party wrongdoer is so close "as to require the defendant to attempt to control the other's conduct." *Pulka v. Edelman*, 40 N.Y.2d 781, 783 (1976); *see Waters*, 69 N.Y.2d at 230 (examining whether defendant has "control over either the acts of the primary

wrongdoer or the conditions on the public byways that make such acts all too commonplace"). Second, the defendant's relationship with the plaintiff or the wrongdoer "circumscribe[s]" "the class of potential plaintiffs" to avoid "the specter of limitless liability." *Hamilton*, 96 N.Y.2d at 233; *see Waters*, 69 N.Y.2d at 230. When these two characteristics are missing, this Court has found that the relationship is not special and rejected the imposition of a duty. *See Hamilton*, 96 N.Y.2d at 233-34; *Waters*, 69 N.Y.2d at 230-31; *Pulka*, 40 N.Y.2d at 783 ("the duty to control others arises only" under those circumstances).

B. The No-Duty-To-Control Rule Bars The Claims Here

This rule forecloses the municipalities' claims. Because the municipalities assert that the manufacturers should have prevented unaffiliated, third-party car thieves from harming the municipalities, the no-duty-to-control rule applies. The municipalities must therefore show that the manufacturers had a "special" relationship with the municipalities or the car thieves. But the relationships implicated here look nothing like those this Court has found sufficient, and everything like those it has already rejected.

In *Waters*, for instance, this Court held that a landlord who failed to repair broken locks owed no duty to a passerby who was forced into the building by a criminal and assaulted. *See* 69 N.Y.2d at 227. This Court stressed that the asserted relationships lacked the two key elements of a special relationship: the defendant's

ability to "control" the wrongdoer and "limits on liability." *Id.* at 230 (internal quotation marks omitted). Even though fixing the lock could have prevented the assault, this Court found the "landowner ha[d] no control" over the criminal's acts, or over the "conditions" that make "such crimes all too commonplace." *Id.* It further explained that recognizing a duty would expose the landlord (and others like it) to "virtually limitless liability." *Id.* Because the landlord lacked any relationship to the plaintiff, imposing a duty would mean it likewise had an obligation to "all others in her position"—*i.e.*, "the public at large." *Id.* at 229-30.

Hamilton found the defendants' relationships insufficient to create a duty on similar grounds. A group of crime victims and their relatives sued the manufacturers of the weapons that criminals used to harm them, asserting that the manufacturers had caused those harms by failing to adequately control the marketing and distribution of their products. *See* 96 N.Y.2d at 229, 231. Although this Court recited the default five factors, it resolved the duty question by focusing on whether "defendant[s'] relationship[s]" supplied the sort of third-party control and liability limitations that could create a duty to prevent crimes by others. *Id.* at 233. This Court found that the manufacturers' relationships lacked both features and thus declined to impose a new duty on them. *See id.* at 235-36 (no evidence that manufacturers had control); *id.* at 233-34 ("The possible pool of plaintiffs is very large—potentially, any of the thousands of victims [of crime]."). This analysis

mirrors that employed by this Court in other no-duty-to-control cases, which declined to recognize a new duty for the same reasons. *See Pulka*, 40 N.Y.2d at 784, 786 (discussing lack of "control" and "potential" for "liability" that "would be all but limitless"); *Purdy*, 72 N.Y.2d at 8-10 (same for "control" and "duty owing to members of an indeterminate class").

The duty asserted here fails for the same reasons. First, the manufacturers have no ability to control the car thieves who targeted their vehicles, much less to control the social media influencers who popularized those tactics. Far from a master-servant or parent-child relationship, the manufacturers have *no* meaningful relationship with either group and no control over their conduct. *Cf. Purdy*, 72 N.Y.2d at 8. Nor does it matter whether they could have installed technology that would have deterred or prevented theft. The landlord in *Waters* could have prevented the assault by fixing the locks, yet this Court still found control was lacking. *See* 69 N.Y.2d at 227. What matters is not whether the defendant could have taken some action to avert the harm, but whether it had actual "control over either the acts of the primary wrongdoer or the conditions . . . that make such acts all too commonplace." *Id.* at 230. The manufacturers had no such control here.

Second, the car manufacturers do not have a relationship with the municipalities or third-party criminals that would circumscribe the potential class of plaintiffs. In *Hamilton*, this Court rejected the asserted duty because it would expose

the defendant manufacturers to a "pool of possible plaintiffs" including "any of the thousands of victims" of crime. *Hamilton*, 96 N.Y.2d at 233-34; *see Waters*, 69 N.Y.2d at 229 (asserted duty would run to "the public at large"). This case is no different. There are tens of thousands of local governments across the country, and the relevant thefts of Hyundais and Kias occurred in cities and towns far and wide. Hyundai does not have any particular relationship to, say, the City of Buffalo that uniquely enabled the City to bring its claim. Just as the class of potential plaintiffs in *Hamilton* included all those injured by certain violent crimes, the class of potential plaintiffs here extends to any governmental entity that expended resources responding to one of these car thefts. That is just the sort of "limitless liability to an indeterminate class of persons" that this Court has found improper. *Hamilton*, 96 N.Y.2d at 232 (internal quotation marks omitted).

C. The Municipalities' Contrary Arguments Fail

The municipalities do not argue that the manufacturers had any relationships that could satisfy the no-duty-to-control rule. They instead insist the no-duty-to-control rule does not apply, even though they assert that the manufacturers had a duty to control third parties. Their arguments fail.

The municipalities first assert (at 47-48) that the no-duty-to-control rule is not an actual rule but merely "part and parcel" of the default five-factor duty analysis. That is incorrect. The no-duty-to-control rule is a more stringent analysis that

focuses on the strength of the defendant's relationships, not balancing factors in the abstract. Indeed, when a case implicates a duty to control third parties, this Court usually omits the default factors altogether and proceeds straight to the no-duty-to-control rule. *See Purdy*, 72 N.Y.2d at 8; *Pulka*, 40 N.Y.2d at 783; *Waters*, 69 N.Y.2d at 229-30. And when the default factors do surface in third-party cases, they receive only passing mention. In *Hamilton*, for instance, this Court recited the five factors at the outset before pivoting to the no-duty-to-control rule. *See* 96 N.Y.2d at 232-33. Rather than ticking through the factors, this Court narrowed the inquiry to the precise relationship between the plaintiff, defendant, and third-party tortfeasor, probing whether those links were akin to the special relationships that had already been found to create a duty. *See id.* at 233. And while that relationship-centric inquiry focuses on issues like ability to control and limits on liability, *see id.*, that is not because this Court is applying the default factors—it is because those are the key features that make a relationship sufficiently special, *id.*; *see Waters*, 69 N.Y.2d at 229-30.

The municipalities also seek to evade the no-duty-to-control rule by attempting to distinguish this case from others applying that rule. They offer several "key" facts that supposedly make this case different. *See* Municipalities Br. 48-50 (arguing that duty to install anti-theft features is "core" to the manufacturers' business); *id.* at 51-52 (arguing that allegedly negligent design occurred while

vehicles were under their "control"). But those supposedly "key" facts do not play a role in this Court's analysis. When deciding whether the no-duty-to-control rule applies, only one fact matters: whether the asserted duty involves controlling the conduct of a third party. Because that is the exact duty asserted here, the municipalities cannot evade the no-duty-to-control rule by pointing to case-specific facts unless those facts show the manufacturers had a special relationship that could trigger a duty—which they do not.

Regardless, the distinctions the manufacturers draw are unconvincing. The manufacturers insist (at 49) that the no-duty-to-control rule does not apply whenever the plaintiff's injury allegedly relates to the "core" of the defendant's business. But the "core" business of a carmaker is making cars, not preventing theft. Besides, the municipalities' "core business" distinction cannot be squared with this Court's decisions in *Waters* and *Purdy*. If the "core" of a car business includes installing anti-theft systems, then certainly the "core" of a landlord's work includes making repairs to the building, including fixing broken locks. *See Waters*, 69 N.Y.2d at 227. The same reasoning applies to health facilities, whose core business would include watching over its residents to prevent harm to and by them. *See Purdy*, 72 N.Y.2d at 6-7. Yet this Court applied the no-duty-to-control rule and declined to create a duty in both cases.

Nor is there merit to the municipalities' assertion (at 51-52) that this case differs because the alleged "negligence occurred while the vehicles were under Hyundai and Kia's control." The relevant point is that the *third-party criminals* were not under the manufacturers' control. This Court has repeatedly invoked the no-duty-to-control rule when the defendant allegedly had control over a defective premises or product. *See Waters*, 69 N.Y.2d at 227 (no duty even though landlord could have fixed lock before criminal entered scene); *Pulka*, 40 N.Y.2d at 785 (no duty even though garage operator could have installed signs or warnings or directed employees to drive vehicles onto street); *Hamilton*, 96 N.Y.2d at 235-36 (no duty even though manufacturers purportedly had ability to control negligent marketing and distribution of weapons). This case is no different.

II. THE DEFAULT DUTY ANALYSIS CONFIRMS THAT THE MANUFACTURERS HAVE NO DUTY

This Court has not applied the default five-factor duty analysis in a case involving a duty to control third-party misconduct. But even if the inquiry were expanded to encompass those factors, they only confirm that no duty should be imposed. Foisting that obligation on the manufacturers would be at odds with reasonable expectations, threaten businesses with limitless liability, saddle companies with significant burdens that will ultimately be passed on to consumers, and interfere with the carefully balanced judgments of legislatures and regulatory agencies in setting industry standards. These harmful consequences would hardly

be limited by the facts of this case, as many useful and beneficial products can be stolen or misused and thus create the predicate for more lawsuits like this one.

A. Recognizing A Duty Would Contravene Reasonable Expectations

As this Court explained in *Palka*, the first duty factor examines "the injured person's reasonable expectation of the care owed and the basis for the expectation." 83 N.Y.2d at 585. The municipalities contend (at 21) that they had a reasonable expectation that the manufacturers would install a specific type of anti-theft device in their vehicles—an engine immobilizer—in order to "protect" the municipalities from downstream harms, such as the costs of using law enforcement to respond to thefts.

This Court has never recognized a reasonable expectation so capacious. In its decisions discussing this factor, this Court has found a reasonable expectation of harm prevention only when the parties had a meaningful relationship. In *Palka*, for instance, this Court found that nurses had a "reasonable expectation" that the company maintaining the hospital where they worked would perform "basic safety inspections" and prevent fixtures from falling and injuring those inside. *Id.* at 585-86. This Court also recognized that an assault victim had a reasonable expectation of city police protection against her ex-husband because the police were aware of his dangerous nature and had been in constant communication with the victim on the day of the assault. *See Sorichetti v. City of New York*, 65 N.Y.2d 461, 469 (1985).

And as the municipalities contend (at 21), this Court has implicitly found that motorists injured by an impaired medical patient have a reasonable expectation that the doctor would warn the patient about the disorienting effects of narcotics. *See Davis*, 26 N.Y.3d at 577 (finding a duty to injured motorists without explicitly discussing reasonable expectations); *see also Tenuto v. Lederle Lab'ys, Div. of Am. Cyanamid Co.*, 90 N.Y.2d 606, 612 (1997) (similar for doctor who failed to warn infant plaintiff's parents that administration of live-virus vaccine could lead to parents' infection).

In all those cases, the defendant had a concrete relationship with the plaintiff or the third-party wrongdoer—nurse-hospital, assault victim-police, doctor-patient (or patient's guardians). Those relationships supplied the foundation for a reasonable expectation. *See, e.g.*, *Lauer*, 95 N.Y.2d at 104 n.2 (distinguishing *Sorichetti* on the basis that plaintiff had no meaningful contact with defendant). Because the parties were closely associated, the plaintiff had a reasonable expectation that the defendant would take steps to prevent the ensuing harm.

This case is the opposite. The manufacturers have no meaningful connection to the municipalities, much less with the third-party criminals. The manufacturers happen to sell their vehicles to unrelated consumers who then happen to bring those vehicles into the municipalities, where the vehicles then happen to be stolen by criminals who are likewise unaffiliated with the manufacturers. None of these

tenuous associations amounts to a "relationship," and certainly not a sufficiently special relationship according to the standards set in this Court's decisions. Because that relationship is nonexistent, the municipalities have no reasonable expectation that the manufacturers will protect them from the costs of addressing third-party crime.

B. The Municipalities' Theory of Liability Would Vastly Expand To Other Businesses And Industries

The second *Palka* factor asks whether recognizing a duty would lead to the "proliferation of claims" in other scenarios. *Palka*, 83 N.Y.2d at 586. As this Court has explained, courts "must be mindful of the precedential, and consequential, future effects of their rulings." *Lauer*, 95 N.Y.2d at 100. Even when a "particular case" might seem to suggest a duty, courts must "limit the legal consequences of wrongs to a controllable degree." *Id.* (quoting *Tobin v. Grossman*, 24 N.Y.2d 609, 619 (1969)).

Recognizing a duty here would turn that objective on its head. The municipalities do not (and cannot) delineate under their theory of duty a limited category of third-party wrongs defendants would be responsible for preventing. Indeed, as the manufacturers point out, other plaintiffs have already brought similar claims against different manufacturers who *did* use engine immobilizers, alleging that they could have done *still more* to prevent theft. *See* Manufacturers Br. 37

(collecting cases). Recognizing a duty here would invite only more of the same, proliferating the municipalities' claims across the car industry.

What's more, the municipalities' theory of duty hardly stops at car thefts. If this Court were to adopt that theory, future plaintiffs might argue that the manufacturers should foresee—and therefore protect against—not only criminals stealing cars, but also drivers speeding or driving while intoxicated, or criminals using their own cars to commit robberies or other crimes. And the municipalities' new expansive theory of duty would cascade into many other industries beyond cars. Similar examples exist for virtually any product or service: Manufacturers of cellphones, laptops, or nearly any valuable item may be required to prevent the theft of their products; brick-and-mortar stores may be required to install anti-theft measures; service providers may be required to protect against scammers impersonating them; and more. The municipalities' duty rule would turn every preventable crime into a potential lawsuit, obliterating the general rule that businesses are not liable for third-party crimes. The exception would entirely swallow that rule.

C. Businesses Would Face Unlimited, Insurer-Like Liability

Palka also instructs courts to consider whether recognizing a new duty would potentially expose the defendant to "unlimited or insurer-like liability." 83 N.Y.2d at 586. When this Court has recognized a new duty, it has been in scenarios where

the parties' relationships limited the class of plaintiffs "to a known and identifiable group." *Palka*, 83 N.Y.2d at 589. In *Palka*, this Court emphasized that imposing a duty on hospital maintenance companies to perform safety inspections would lead to potential claims only from "hospital employees, patients and visitors." *Id.* Recognizing duties that run from doctors to the patients they treat (and those injured because of that treatment) similarly circumscribes the potential universe of plaintiffs. *See Davis*, 26 N.Y.3d at 579; *Tenuto*, 90 N.Y.2d at 612.

By contrast, this Court has rejected assertions of new duties that would subject defendants to "limitless liability to an indeterminate class of persons." *Eiseman*, 70 N.Y.2d at 188. This Court in *Strauss*, for instance, held that a power company owed no duty to a tenant who was injured after falling in a common area of his apartment building during a blackout. *See Strauss v. Belle Realty Co.*, 65 N.Y.2d 399, 405 (1985). As this Court explained, "permitting recovery to those in the plaintiff's circumstances would . . . violate the court's responsibility to define an orbit of duty that places controllable limits on liability." *Id.*

Adopting a new duty here would stretch the orbit of liability beyond limit. As already discussed, *see supra* p. 14, the manufacturers' cars are driven in cities across the country and tens of thousands have allegedly been stolen. Every city or town that responded to one of those thefts would be a plaintiff-in-waiting, at least under the municipalities' sweeping theory of duty. The result would be a "very large"

"pool of possible plaintiffs" only "remote[ly]" connected to the manufacturers themselves—precisely the outcome this Court has warned against. *Hamilton*, 96 N.Y.2d at 233-34. And as discussed, a duty to prevent theft could extend beyond municipalities to innumerable other categories of plaintiffs.

The types of damages potentially available would be just as sweeping. The municipalities seek (at 33) compensation for the money they spent responding to thefts of vehicles and fixing property damage on public roads. But why stop there? Third-party misconduct could also lead to municipal hospital visits and other medical costs, or result in increased use of social services or other safety-net resources by victims. And while the municipalities insist (at 33 n.6) that they are not seeking "negligence damages for prosecutorial resources or jail costs borne by third parties," they give no reason why they could not attempt to recover such damages. The municipalities' expansive tort theory threatens to put defendants on the hook for all of those attenuated downstream costs and more, turning them into quasi-insurers for government expenditures and societal harms.

Imposing such sweeping potential tort liability would create "impractical and unbearable" burdens on manufacturers, distributors, and similar businesses. *Pulka*, 40 N.Y.2d at 786. Businesses cannot easily anticipate what judges and juries will retroactively determine was needed to comply with amorphous tort duties. The municipalities' theory of liability illustrates that difficulty. They fault the

manufacturers for not including engine immobilizers in their vehicles because, they claim, studies showed that those technologies could reduce thefts. Municipalities Br. 7. But those studies provide no direction to manufacturers about how to avoid liability for third-party crimes, as there are likely numerous research studies about any number of different anti-theft technologies, as well as new research continuously being conducted. Indeed, as discussed, other lawsuits have targeted manufacturers that *did* use the anti-theft technology at issue here.

And even if research studies could delimit manufacturers' liability, that standard would still impose unnecessary burdens and costs on manufacturers—especially those operating in industries where technology advances rapidly. Businesses cannot realistically be expected to identify and implement every imaginable safety feature that a research study claims could potentially prevent third-party crime. The costs of monitoring new research developments and crime reports nationwide would be substantial, even putting aside the costs of implementing any new protective measures identified. And on top of that, businesses would face the additional challenge of (and related costs from) deciphering the recommendations of various studies and guessing about how many studies must be published to trigger a duty to implement a particular technology. Faced with this intractable uncertainty, businesses will be unable to assess their exposure and make appropriate business judgments, such as deciding how much

liability insurance to purchase and how much cash to keep on hand to cover future litigation and potential settlements.

Attempting to enforce industry norms through broad tort duties will also hamper innovation and reduce consumer choice. For example, the municipalities argue (at 7) that the manufacturers should have used engine immobilizers because other carmakers did so. But if businesses must rigidly adhere to industry norms to avoid liability, they will be discouraged from innovating to create new and better solutions. And as businesses eschew experimentation for conformity, consumers will inevitably have less diversity of products to choose from in the marketplace.

Ultimately, increasing the risks of an activity will "discourage[]" businesses from engaging in it. *Enright v. Eli Lilly & Co.*, 77 N.Y.2d 377, 388 (1991). Indeed, the duty to "protect against criminal misuse of its product" could force some businesses to take products with "socially valuable uses" entirely "off the market due to the threat of limitless liability." *McCarthy v. Olin Corp.*, 119 F.3d 148, 157 (2d Cir. 1997). Manufacturers will pass their increased burdens on to consumers in the form of higher costs, higher insurance premiums, and less access to useful goods and services. *See* Editorial, *How Lawsuits Cost You $3,600 a Year*, Wall St. J. (Dec. 11, 2022) (costs of tort litigation are "spread through the economy in the form of higher insurance premiums that fall on nearly every family, either directly (car

insurance) or indirectly (medical malpractice or product-liability insurance)")[1]; David Williams, "The Economic Impact of Mass Tort Litigation," *Real Clear Markets* (Oct. 9, 2023) (estimating that just under $500 billion in tort costs is passed on to consumers);[2] "Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System," *U.S. Chamber of Commerce* (3d ed. Nov. 2024).[3] This Court should reject a rule with such sweeping negative consequences for businesses and the consumers they serve.

D. Recognizing A Broad Duty To Prevent Third-Party Crime Would Unfairly Allocate Risk and Reparations To Businesses

The municipalities' proposed duty would also frustrate the fourth *Palka* factor: the "fair" allocation of "risks" and "burdens of loss." 83 N.Y.2d at 585. Tort law generally refuses to impose a duty to prevent third-party harms because it is "unfair[]" to hold one person liable for another's wrongdoing. *Hamilton*, 96 N.Y.2d at 233; *see Pulka*, 40 N.Y.2d at 784. Special relationships warrant a narrow exception to this rule because those relationships give defendants the ability and

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[1] *Available at* https://www.wsj.com/articles/how-lawsuits-cost-you-3-600-a-year-tort-system-chamber-of-commerce-institute-for-legal-reform-report-11670460820 (last accessed Feb. 18, 2026).

[2] *Available at* https://www.realclearmarkets.com/articles/2023/10/09/the_economic_impact_of_mass_tort_litigation_984499.html (last accessed Feb. 18, 2026).

[3] *Available at* https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf (last accessed Feb. 18, 2026).

authority to control third-party wrongdoers. *See Pulka*, 40 N.Y.2d at 783. But when such a relationship is absent, so is the justification for allocating risks and losses to the defendant.

Car thefts are reprehensible crimes that place financial and social burdens on society. Both tort and criminal law recognize the seriousness of those offenses by holding accountable the party responsible: the criminals who stole the cars. But the same moral judgment does not extend to those who do not share in the criminals' culpability. The manufacturers did not steal the cars or in any way aid or abet those who did. Nor do they have the ability or authority to control the criminals' conduct. When manufacturers put products into the stream of commerce, they generally lose the ability to control (or even know) who uses the products and how, because the products may be resold, shared, or stolen. It would be "most unfair" to hold the manufacturers responsible for criminal actions that are beyond their control. *Id.* at 784.

Adopting the municipalities' definition of duty would eviscerate tort law's underlying fairness principle. As noted, it would make liability for third-party conduct the norm rather than the exception, exposing defendants to lawsuits whenever such conduct was even remotely foreseeable. For example, stores located in certain areas may anticipate some risk that a patron is robbed after he or she leaves the premises; neighbors may suspect that others in their neighborhood are using their

homes for unlawful activities; and bystanders may witness crimes as they occur. Society does not typically hold such stores, neighbors, or bystanders morally responsible for the harm from those crimes. Yet the municipalities would find those defendants liable in tort for third-party crimes unless that misconduct was somehow unexpected. That is not how tort law does or should work.

E. Public Policy Counsels Against The Proposed Duty

Finally, *Palka* instructs courts to consider the impact a new duty would have on "public policies affecting the expansion or limitation of new channels of liability." 83 N.Y.2d at 586. Embracing the duty proposed here would undermine a policy of particular importance in this State: institutional competence.

"In fashioning specific remedies," this Court strives to "avoid intrusion on the primary domain of another branch of government." *Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14, 28 (2006). This Court has therefore been "cautious in imposing new theories of tort liability" when the issue is already the subject of a comprehensive "statutory and regulatory scheme." *Hamilton*, 96 N.Y.2d at 239-40; *see Campaign for Fiscal Equity*, 8 N.Y.3d at 28 (explaining that such "complex society and governmental issues" are best "left to the discretion of the political branches of government"). Indeed, "[t]o foist a presumed cure for these problems by judicial innovation of a new kind of liability in tort would be foolhardy indeed

and an assumption of judicial wisdom and power not possessed by the courts." *Riss v. City of New York*, 22 N.Y.2d 579, 582 (1968).

Automobile safety and theft prevention are regulatory issues best left to the political branches. In seeking to impose a new duty, the municipalities argue that the manufacturers should have outfitted their cars with additional safety features. But automobiles are already subject to a rigorous federal regulatory scheme, encompassing all manner of standards relating to safety and anti-theft technology. *E.g.*, National Traffic and Motor Vehicle Safety Act, Pub. L. No. 89-563, 80 Stat. 718 (1966); Motor Vehicle Theft Law Enforcement Act, Pub. L. No. 98-547, 98 Stat. 2754 (1984). And the very issue in dispute here—anti-theft technology—is already governed by a regulation promulgated by the U.S. Department of Transportation's National Highway Traffic Safety Administration ("NHTSA"). *See* Federal Motor Vehicle Safety Standard ("FMVSS") 114, 49 C.F.R. § 571.114. This regulation requires cars to have a starting system that prevents "(a) [t]he normal activation of the vehicle's engine or motor; and (b) [e]ither steering, or forward self-mobility, of the vehicle, or both," whenever the key is removed. *Id.* at S5.1.1.

Significantly, this standard is a flexible one and decidedly does not require the engine immobilizers that the municipalities seek. That choice was deliberate. When it enacted FMVSS 114, NHTSA consciously declined to require any "specific theft protection devices" because "it would be unwise to establish a standard in terms so

restrictive as to discourage technological innovation in the field of theft inhibition." 33 Fed. Reg. 6471, 6472 (1968).

The municipalities seek to override that nuanced expert judgment using the blunt instrument of tort law. They would have carmakers include specific types of anti-theft technology, despite NHTSA's assessment that such a requirement would be "unwise." *Id.* As this Court has explained, the solutions to "complex societal and governmental issues [are] a subject left to the discretion of the political branches of government." *Campaign for Fiscal Equity*, 8 N.Y.3d at 28. That is especially true for highly technical issues like the most effective means for deterring crime involving automobiles. Rather than attempting to dictate solutions through "the indirect imposition of tort liabilities," courts should defer to regulatory or "legislative determination[s]" by authorities like NHTSA. *Riss*, 22 N.Y.2d at 582-83. If the municipalities believe that engine immobilizers should be required, they can present those arguments to the political branches best suited to make those calls.

In fact, the City of New York—a plaintiff here—has successfully invoked this principle in arguing that it had no duty to prevent certain third-party misconduct. In *Riss*, the victim of an assault sued the City and alleged that it had failed to protect her from third-party harms. *See* 22 N.Y.2d at 581. The City asserted that it had no tort duty to protect members of the public from crime because the judiciary was the wrong branch to impose that sort of responsibility. *Id.* at 580 (summarizing the

City's arguments). This Court agreed. As it explained, requiring the City to provide that protection "by judicial innovation of a new kind of liability in tort would be foolhardy indeed and an assumption of judicial wisdom and power not possessed by the courts." *Id.* at 582. The same principle applies with equal force to addressing complex problems like automobile safety and crime prevention. Other branches are far better equipped to craft the solutions, with far greater flexibility and capacity for trial and error. The extent of such policy "responsibilities" should be dictated not "by the indirect imposition of tort liabilities" but through a proper "legislative determination." *Id.*

CONCLUSION

The certified question should be answered in the negative.

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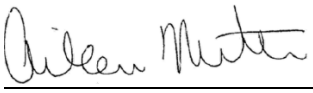
Respectfully submitted,



KARL J. MIHM
MORRISON & FOERSTER LLP
250 West 55th Street
New York, NY 10019
Tel.: (212) 336-4368
Fax: (212) 468-7900
KMihm@mofo.com

AILEEN M. MCGRATH
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel.: (415) 268-6153
Fax: (415) 268-7522
AMcGrath@mofo.com

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

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AILEEN M. MCGRATH
(*pro hac vice forthcoming*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel.: (415) 268-6153
Fax: (415) 268-7522
AMcGrath@mofo.com